

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

██████████
v.

Hoertdoerfer Dentistry, P.L.L.C.
CASE #100819

DECISION OF THE HEARING OFFICER

APPEARANCES: Claimant, self-represented
Nathan Lynch, Esq., representing the employer

NATURE OF DISPUTE: RSA 275:43, I — Weekly (unpaid wages)
RSA 275:43, I — Weekly (unpaid holiday time)
RSA 275:43, I — Weekly (unpaid PTO)

DATE OF HEARING: April 7, 2022

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant filed a wage claim on January 25, 2022, alleging that she is owed \$231.75 in holiday pay for New Year's Eve, December 31, 2021 and \$6,592.00 in lieu of 128 hours of earned PTO.

Notice of claim was sent to the employer on January 27. The employer filed an objection on February 3 denying the claim. The claimant requested a hearing. The hearing notice was sent on March 15.

FINDINGS OF FACT

The following findings are based on the testimony of the claimant and the employer's owner, Bryan Hoertdoerfer, exhibits offered by both parties, and matters of record in the Department file. Both parties acknowledged under oath that their written submissions to the Department were true and accurate to the best of their knowledge and belief, and those statements are treated herein as part of the testimony in the case.

Claimant is ██████████ and lives in ██████████. She has a bachelor of science degree and an associate's degree in dental hygiene. In 2001, she started working as a registered dental hygienist at a dental practice in

Manchester. In 2011, Dr. Hoertdoerfer took over the practice and she continued working for him.

The claimant worked 36.5 hours a week and was paid \$51.50 per hour. Biweekly pay periods ran from Sunday to Saturday. Payday was the following Friday. Claimant was paid by direct deposit.

All employees were entitled to paid holidays. If the holiday fell on a Sunday, the holiday was observed on the following Monday; if it fell on a Saturday, the holiday was observed on the preceding Friday. New Year's Day was a paid holiday. In 2022, New Year's Day was on Saturday, therefore the employer observed the holiday on Friday, December 31, 2021. The office was closed that day.

Pursuant to the employer's office policy manual (OPM), the claimant, as an employee with more than 15 years of continuous employment, was eligible for four weeks (20 days) of paid time off. Unused PTO could not be carried over into a new calendar year. Paid time off was given in a lump sum at the beginning of the new calendar year. OPM at 25.

With regard to voluntary resignation, the manual provided in pertinent part as follows:

Two (2) week advance notice is necessary and helps us in preparation and prompt payment of your final check....

If you voluntarily resign you may not receive payment for any unused vacation, sick, or personal time.

OPM 12. Claimant acknowledged receiving a copy of the policy manual.

On December 15, 2021, the claimant provided written notice of her intent to resign. In pertinent part, she wrote:

This letter is to inform you of my resignation. I would like to finish working till the end of the year with my official last day being December 31, 2021.

Claimant's exhibit.

Claimant testified that, when she wrote the letter, she was aware that December 31, 2021 was the date on which the employer would observe the January 1, 2022 holiday. She submitted as an exhibit a copy of the office calendar for December 31, 2021, which indicated that the office was closed all day. She further testified that, at or around the time she submitted her two weeks' notice, she asked the office manager Penny Abood to please make sure that she was paid for the holiday. According to the claimant, Ms. Abood's response was, "I'll see what I can do."

Claimant's last day at work was Thursday, December 30. The office was closed on December 31 for the observed New Year's day holiday. Claimant

testified that all employees other than herself received holiday pay for December 31.

Claimant received her final paycheck by direct deposit on the next regular payday, January 14, 2022. The paycheck covered the pay period December 26, 2021–January 8, 2022. Claimant was paid for the 32 hours she worked over the first four days of the pay period. She did not receive holiday pay for December 31.

With regard to PTO, claimant testified that she had used all the PTO she had been awarded at the beginning of 2021. However, it was her understanding based on the final paystub that she had 128 hours PTO as of the end of that pay period. However, she did not receive a payout for PTO.

Bryan Hoertdoerfer, D.D.S., 57, of Lincoln, Massachusetts, is the owner of the Manchester dental practice where the claimant worked. He currently has seven employees.

He testified that, by policy and practice, when an employee resigns from the company, his or her eligibility for benefits—including holiday pay—stops effective with the last day worked.

In his objection to the claim for holiday pay, Dr. Hoertdoerfer stated that, although the claimant in her resignation letter said she would like to work through to the end of the year, ██████████ last day of employment was in fact December 30, 2021.” Asked whether there were any verbal discussions regarding what her effective last day of employment was, Dr. Hoertdoerfer testified that, on the day the claimant turned in her notice, she told him she would like to work up until the end of the year; he responded, “We’ll do everything we can to have that happen.” He was not aware of any more specific discussions than that. Although the office was open December 26–30, 2021, Dr. Hoertdoerfer was on vacation that week, and thus did not have the opportunity to discuss the matter with claimant during her final week of employment.

With regard to the claim for a payment of unused PTO, Dr. Hoertdoerfer stated in his written objection that pursuant to written policy and company practice, employees who voluntarily resign are not eligible to receive payment for any unused personal time. He further testified that, as the claimant’s employment ended before 2022, she was not even eligible to receive the annual PTO lump sum award for 2022.

DISCUSSION AND CONCLUSIONS

The claimant had the burden of proving by a preponderance of the evidence that she was owed unpaid wages. Proof by a preponderance as defined in Lab 202.05 is a demonstration by admissible evidence that a fact or

legal conclusion is more probable than not. The hearing officer is charged with evaluating the testimony and exhibits in the case and deciding the issues presented, based upon "reliable, probative, and substantial evidence," Department Rule Lab 204.07(n).

RSA 275:43, V provides that

Vacation pay, severance pay, personal days, holiday pay, sick pay, and payment of employee expenses, when such benefits are a matter of employment practice or policy, or both, shall be considered wages pursuant to RSA 275:42, III, when due.

"[W]hen due" is a reference to specified contingencies the employee needs to meet in order to be eligible to receive the benefit in question.

With regard to the claim for holiday pay, it was not contested that the dental office was closed on December 31, 2021 in observance of the holiday for New Year's Day. It was also not contested that all the employees received holiday pay for that day—with the exception of the claimant.

The employer argued that the claimant was not entitled to receive holiday pay for December 31 because she was no longer an employee as of that date—her last day of employment was the day before, December 30, 2021.

The claimant countered that in her letter of resignation she had specifically requested that she be allowed to work until the end of the year with her "official last day being December 31, 2021. Also, in a conversation with the office manager, she had requested that the office manager make sure that Dr. Hoertdoerfer paid her for the December 31 holiday as that was her official last day. It was uncontested that the office manager said only that she would see what she could do. According to Dr. Hoertdoerfer, claimant asked him that she be allowed to work up to the end of the year and his response was that he would see "what we can do." Dr. Hoertdoerfer pointed out that he was under no obligation to allow the claimant to continue working through the end of the year. However, as it turned out, the claimant was allowed to work through the end of the year, meaning the last day of the year during which the office was open.

Dr. Hoertdoerfer maintained that the claimant's eligibility for holiday stopped with the last day she worked. No such provision was found in the policy manual. The manual specifically stated that an employee who voluntarily resigned "may not receive payment for any unused vacation, sick, or personal time," omitting any reference to holiday time. There also was no evidence that the employer had a written policy prohibiting employees from receiving holiday pay after giving notice. There was no evidence that, prior to receipt of her final paycheck on January 14, 2022, claimant was informed that her last official day of employment was deemed to be December 30 as opposed to December 31, 2021, or that she would not receive holiday pay for December 31, 2021.

In this regard, RSA 275:49 (Notification, Posting, and Records) provides, in pertinent part,

Every employer shall: ***

III. Make available to his or her employees in writing or through a posted notice maintained in a place accessible to his or her employees employment practices and policies with regard to vacation pay, sick leave, and other fringe benefits....

Department administrative rule Lab 803.03 (Notification and Records) further provides that:

(b) Every employer shall provide his or her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employee's expenses, pension, and all other fringe benefits per RSA 275:49.

Compliance with the statute and the implementing regulation gives an employer a ready means of resolving disputes such as the present one. The employer admitted that it had no formal, written policy addressing an employee's eligibility to use holiday pay after giving notice. Absent evidence that the employer gave the claimant notice that her last official date of employment was December 30 and not December 31 or evidence that holiday pay was unavailable as a matter of policy once an employee gave notice, it is found that the claimant was an employee in good standing on December 31, 2021 and was therefore entitled to receive holiday for that day, the same as any other employee.

With regard to the claim for PTO, it is found that this claim is precluded by the employer's written policy which unambiguously states that upon voluntary resignation, an employee may not receive a payout of unused PTO.

DECISION

Having carefully considered the testimony and exhibits, the Department finds that the claimant proved that she was employed through the end of 2021 and as such was entitled to receive holiday pay for December 31, 2021. Her wage claim for unpaid holiday pay is ruled **valid** to that extent.

The claimant did not prove entitlement to a separation payout of unused PTO and thus her wage claim for PTO is ruled **invalid**.

The employer is hereby ordered to send a check to the Labor Department, payable to ██████████ in the amount of \$231.75, less applicable deductions, within 30 days of the date of this Order.

April 19, 2022
Date of Decision


George A. Stewart, Hearing Officer

GAS/nd